RCMP External
Review Committee

2015-16
Annual Report

Canada

© Minister of Public Services and Procurement Canada

Cat. Number PS20E-PDF
ISSN 1700-8069

RCMP External
Review Committee

Comité externe d'examen
de la GRC

June 17, 2016

The Honourable Ralph Goodale, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Minister:

In accordance with Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit to you the annual report of the RCMP External Review Committee for fiscal year 2015-16, so that it may be tabled in the House of Commons and in the Senate.

Yours truly,

Elizabeth M. Walker
Chair

P. O. Box 1159, Station 'B'
Ottawa, Ontario K1P 5R2
Tel.: 613-998-2134
Fax: 613-990-8969

Casier postal 1159, succursale « B »
Ottawa (Ontario) K1P 5R2
Tél. : 613-998-2134
Téléc. : 613-990-8969

Table of Contents

Message from the Chair 1

PART I - Role and Organization 3

The ERC Case File Review Program 4
Current Legislation Cases 5
Legacy Legislation Cases 7

PART II - Our Results for 2015-16 9

Case Reviews 9
Referrals to the ERC 9
Cases Completed - Findings and Recommendations Issued 10
RCMP Commissioner Decisions Received 13
Highlights of Cases Completed in 2015-16 14
Current Legislation Cases 14
Legacy Legislation Cases 20
Outreach and Communications 27
Publications and Website Information 27
Outreach and Engagement Activities 28
Responses to Requests for Information 28
Corporate Management and Planning 29

PART III - Operational Outlook 31

Maintaining the Integrity of the Appeal Review Program 31
ERC Case Review Practices 32
Service Standards 33

Annexes

A- List of Laws, Regulations and Orders 35
B- Overview of ERC Findings and Recommendations in 2015-16 37
C- Staff and Contacts 47

Message from the Chair

It is widely recognized in all workplaces, whether in the public, private or voluntary sector, that a respectful working environment where accountability and integrity are hallmarks at all levels and where people are valued and treated fairly, is ethically imperative and essential to organizational success.

The RCMP is a complex and unique institution with a long history of serving Canadians and a special place in Canadian culture as the national police service. The RCMP External Review Committee (ERC) is one part of the oversight system for the RCMP. We focus on the labour relations and workplace practices of the Force. Through its reviews of appeals of important workplace issues for RCMP members (including harassment, dismissals and discharges), the ERC serves RCMP members and managers, and the Force as an organization. We also support the public interest in a well-functioning national police service.

The ERC plays a critical, independent role in the labour and human resources management system of the RCMP through our specialized and rigorous case reviews, findings and recommendations. Our case reviews provide an assurance of fair and transparent processes and decision-making for reviewed cases, enhance the integrity of the RCMP recourse system and promote confidence in the system within and outside the Force. Ultimately, the work of the ERC supports a healthy and productive RCMP workplace that serves Canadians well.

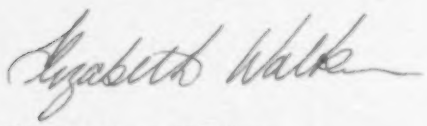
In the spring of 2015, the ERC began to receive files from the RCMP under the current *RCMP Act* (as amended in late 2014). There are now two streams of business at the ERC: the files referred under the current legislation and the continuing referrals under the prior legislation. We manage and track the progress and timeline of each file in the two streams as they move through each stage of ERC review. Case referrals under the current *RCMP Act* require new substantive legal analyses and the ERC is developing revised report formats to address the procedural and legal issues arising from the new referrals.

The ERC is committed to delivering results against its mandate. Each case referred to us affects the individual member, his or her work unit, RCMP management and, depending on the case, the Force as a whole.

Improving our output of findings and recommendations is critical as we anticipate higher caseloads for a number of years as we receive and manage the two streams of referrals. During 2015-16, the ERC focused on improving the efficiency of it case reviews while ensuring the substantive quality of our reviews and findings and recommendations. We adapted our processes to group similar types of cases, to enhance the prioritization and tracking of files, to monitor the timeliness of each stage of our process and to set and review file completion targets.

In 2015-16, we received 101 case referrals, an increase of 248% over the average number of cases received (29) over the past five fiscal years. We are faced with critical capacity challenges to our ability to complete case reviews in a timely manner in order to be meaningful to RCMP members and to the Force. We anticipate further efficiency gains and improvements to our delivery of findings and recommendations. However, such improvements will not fully address the anticipated increased levels of case referrals from the RCMP.

In 2016-17, the ERC is maintaining its commitment to substantive excellence and improved efficiency while taking steps toward securing its performance capacity over the longer term.



Elizabeth M. Walker
Chair

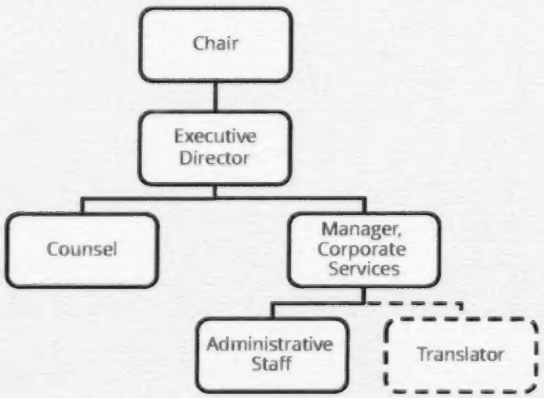
PART I - Role and Organization

The ERC is the independent federal tribunal established by Parliament over twenty five years ago to carry out impartial reviews of certain RCMP employee and labour relations matters, including appeals of disciplinary decisions and decisions regarding allegations of harassment, among others. As a quasi-judicial tribunal, the ERC applies the rule of law and supports transparency, fairness and impartiality in RCMP processes and decision-making through its reviews, findings and recommendations.

The jurisdiction of the ERC is restricted to appeals of employment and labour relations cases involving regular and civilian RCMP members. It is the only independent review mechanism available to members for those cases, other than the courts. Once the ERC has reviewed a case, it issues findings and recommendations to the Commissioner of the RCMP, who then makes the final decision.

The ERC is headed by a Chair who is appointed by order of the Governor in Council, and is the organization's Chief Executive Officer and deputy head. The ERC Chair reports to Parliament through the Minister of Public Safety and Emergency Preparedness. No member of the RCMP is eligible to be appointed as the Chair or as a member of the ERC (the Chair is currently the sole member of the ERC).

ERC staff is comprised of an Executive Director, legal counsel who have expertise in labour, employment and administrative law, program administrators who ensure the day-to-day operations of a modern public institution, and an in-house translator.



The ERC Case File Review Program

The *RCMP Act* and *RCMP Regulations* require the Commissioner of the RCMP to refer appeals of certain cases to the ERC. The ERC does not select the cases it reviews. The case review process begins when a referred file from the RCMP arrives at the ERC.

The ERC examines the entire record of each case, including all supporting documentation, the initial decision(s) made and the submissions of the parties. The ERC Chair may request that one or both parties provide additional information or submissions. The Chair considers all of the evidence, legal issues and case law, relevant legislation and policies before making findings and recommendations. The Chair has the authority to hold a hearing if necessary, although this option has not been exercised since 2001.

The Chair's findings and recommendations are provided to the Commissioner of the RCMP and to the parties involved. The Commissioner is the final decision-maker and must consider the ERC's findings and recommendations. If the Commissioner does not follow the ERC's recommendations, the *RCMP Act* requires the Commissioner to include the reasons for not doing so in his decision.

The work of the ERC benefits both RCMP members and the Force as an organization in a number of ways: supporting fair and transparent processes and decisions for all cases reviewed by the ERC; enhancing confidence both within and outside the Force in the integrity of RCMP labour and other human resource management practices; and, providing ongoing support for a healthy and productive RCMP workplace.

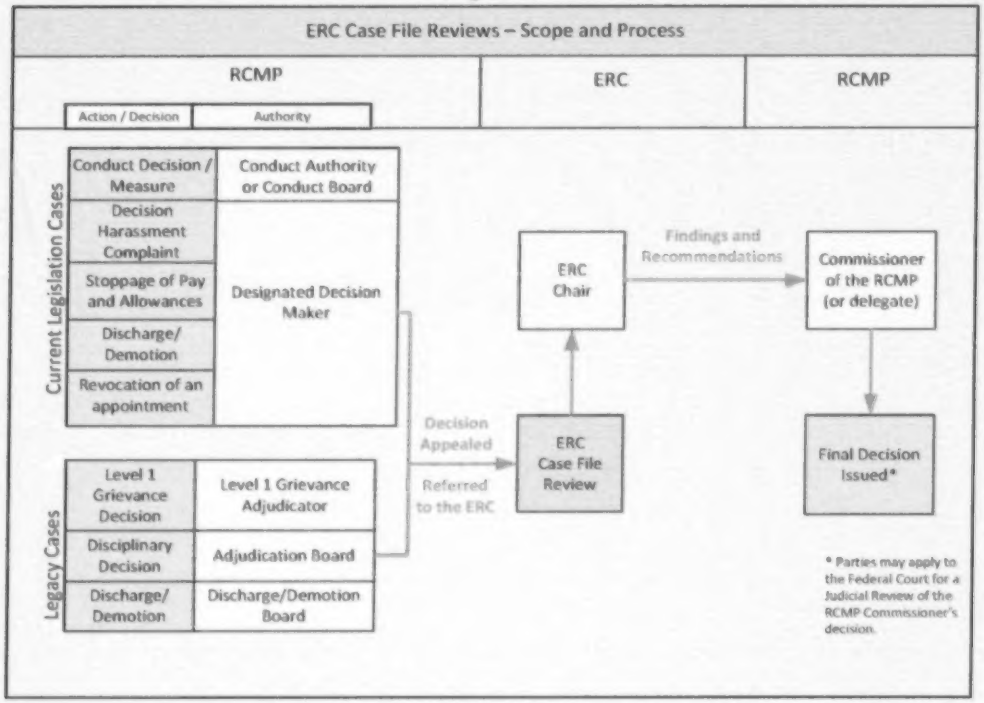
The scope and nature of the cases referred to the ERC by the RCMP changed as of November 28, 2014, when amendments to the *RCMP Act*, *RCMP Regulations* and associated *Commissioner's Standing Orders* (*CSOs*) came into force as part of implementing the *Enhancing RCMP Accountability Act*. The ERC now receives two streams of case referrals:

- one under the current legislation; and
- a second as "legacy" referrals under the former legislation (for cases that commenced within

the RCMP prior to the amendments to the *RCMP Act* in November 2014).

The general scope and process for ERC case file reviews is represented in Figure 1.

Figure 1



Current Legislation Cases

The appeals that are referred to the ERC for its review, findings and recommendations under the current legislation are:

Conduct Decisions/Measures Imposed on Members

There is a wide range of conduct measures which can be imposed on a member of the Force for a contravention of the RCMP *Code of Conduct*. Conduct measures may be imposed by: a Conduct Authority, who is a manager at one of several possible levels, as identified in the *CSOs*; or, a Conduct Board, which consists of one or more persons appointed by an officer designated by the Commissioner.

Conduct measures fall into three categories: **remedial** (e.g., admonishment, direction to undergo training, a reprimand); **corrective** (e.g., financial penalty of not more than 80 hours deducted from pay, forfeiture of annual leave up to 80 hours, deferment of a pay increment, suspension from duty without pay for up to 80 hours, or ineligibility for promotion for up to one year); and, **serious** (e.g., removal of duties, ineligibility for promotion, deferment of a pay increment for up to two years, demotion, transfer, suspension from duty without pay, financial penalty deducted from pay). A member who is the subject of a Conduct Authority decision may appeal any finding that an allegation was established or any resulting conduct measure imposed.

A Conduct Board is convened when the dismissal of a member is sought by a Conduct Authority. If a Conduct Board finds an allegation has been established, the *RCMP Act* provides that one or more of the following measures be imposed: recommendation for dismissal; direction to resign within 14 days or be dismissed; or, one or more of the other measures available under the *CSOs*. Appeals of a Conduct Board decision may be made by the member or by the Conduct Authority who initiated the hearing; they may be based on any finding that an allegation was established or on any conduct measure imposed.

Appeals of Conduct Authority and Conduct Board decisions to impose the following measures are referable to the ERC (pursuant to section 45.15 of the *RCMP Act*):

a) financial penalty of more than one day of a member's pay;
b) demotion;
c) direction to resign; and,
d) dismissal or a recommendation for dismissal.

Decisions on Harassment Complaints*

An appeal by a complainant of a written decision regarding a harassment complaint by a designated decision-maker, following an investigation of the complaint, is referable to the ERC. A respondent in a harassment complaint (the person alleged to have engaged in harassing behaviour) may not appeal the decision following an investigation; however, the respondent may appeal the imposition of certain conduct measures as a result of the harassment decision.

---

*Pursuant to section 17 of the *RCMP Regulations*.

Decisions to Discharge or Demote a Member*

An appeal of a decision to discharge or demote a member for the following reasons is referable to the ERC: unsatisfactory performance; being absent from duty; conflict of interest; and, disability, as defined in the *Canadian Human Rights Act*.

Appeal of an Order to Stop a Member's Pay and Allowances*

An appeal of a decision ordering the stoppage of a member's pay and allowances is referable to the ERC if the member has been suspended from duty for contravening or being suspected of contravening the RCMP *Code of Conduct*, an Act of Parliament or an Act of a provincial legislature.

Revocation of an Appointment*

An appeal of a decision revoking the appointment of a person as a member or revoking the appointment of a member by way of promotion to a higher rank or level is referable to the ERC.

*Pursuant to section 17 of the *RCMP Regulations*.

Legacy Legislation Cases

The cases referred to the ERC under the legacy RCMP legislation are set forth below. Based on historical trends, it is estimated that legacy legislation cases will continue to be referred to the ERC for approximately five years:

Grievances

Legacy grievances covering a broad range of member rights and interests, from claims for reimbursement of expenses to the right to work in an environment free from harassment and discrimination are referred to the ERC. Under the former *RCMP Act*, an RCMP officer designated as a Level I Adjudicator considers and decides a grievance. If the grievor is dissatisfied with the Level I Adjudicator's decision, the grievor may file a Level II grievance which is decided by the Commissioner of the RCMP or a designate. Under *Part III* of the former *RCMP Act* and section 36 of the former *RCMP Regulations*, the Commissioner refers grievances on the following matters to the ERC for review:

- the Force's interpretation and application of government policies that

apply to government departments and that have been made to apply to members;
- the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the former *RCMP Act*;
- the Force's interpretation and application of the *Isolated Posts Directive*;
- the Force's interpretation and application of the *RCMP Relocation Directive*; and
- administrative discharge for reasons of physical or mental disability, abandonment of post or irregular appointment.

Appeals of Discipline (Adjudication) Board Decisions

Under *Part IV* of the former *RCMP Act*, when an RCMP member is alleged to have committed a serious violation of the RCMP *Code of Conduct* and formal discipline is initiated, an internal hearing is held to determine whether or not the allegations are established and, if so, the appropriate sanction. The matter is heard by an Adjudication Board consisting of three RCMP officers. If, after the Board renders its decision, either the Force or the member wishes to appeal that decision to the Commissioner of the RCMP, the Appellant and the Respondent provide written submissions to the Commissioner. The Commissioner then refers the file to the ERC for its review.

Appeals of Discharge/Demotion Board Decisions

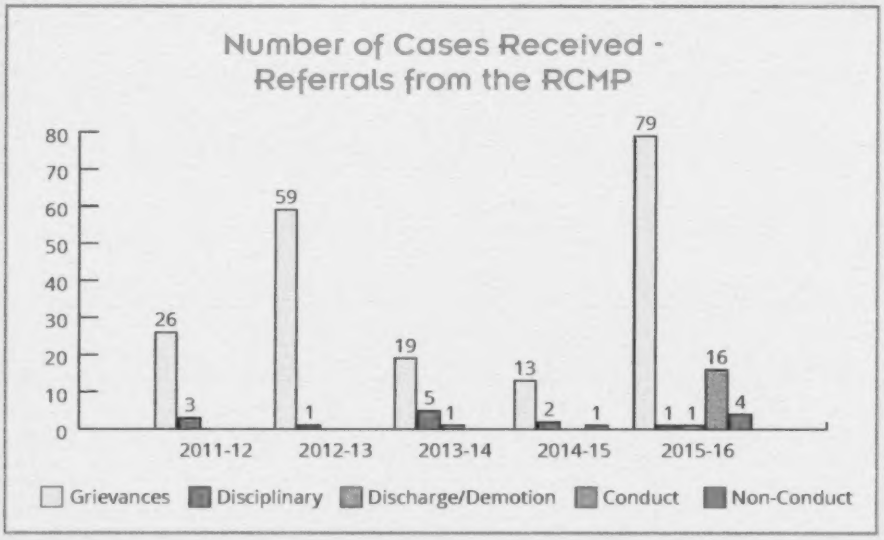
Under *Part V* of the former *RCMP Act*, a discharge or a demotion proceeding may be initiated against a member for failing to perform their duties in a satisfactory manner. When this happens, the member may request that a Discharge and Demotion Board, consisting of three officers of the RCMP, be convened to review the matter. The decision of the Board may be appealed by either the member or the Appropriate Officer who initiated the proceeding. Appeal submissions are made in writing to the Commissioner of the RCMP. The Commissioner then refers the appeals to the ERC for its review.

PART II - Our Results for 2015-16

Case Reviews

Referrals to the ERC

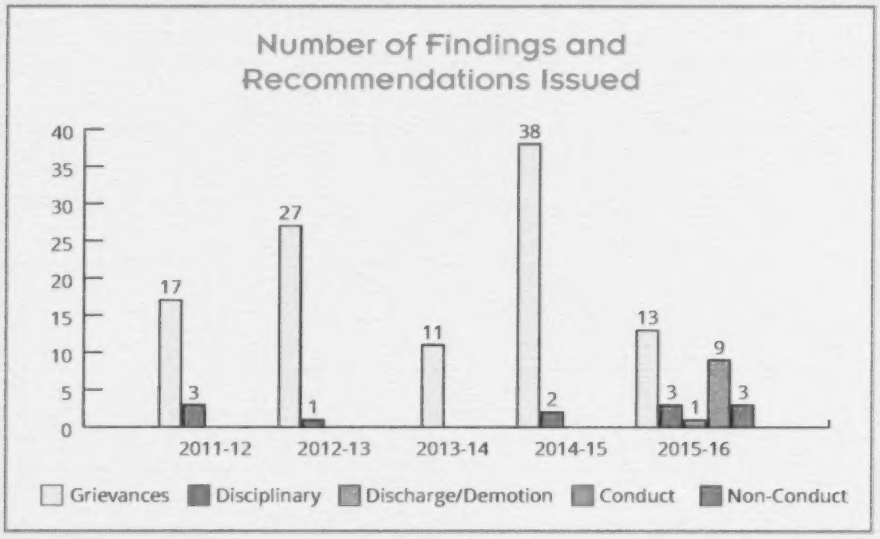
The ERC received 101 file referrals from the RCMP in 2015-16, which is considerably higher than the average of 29 referrals over the five previous years. This resulted from: a very high number of referrals (81) of legacy case files (likely resulting from transitional work within the Force); combined with, the arrival of referrals under the current legislation with some regularity for the first time (20 files).



The ERC pre-screens all files shortly after they are received. Pre-screening has several purposes: to verify file contents and completeness in case there is a need for follow-up with the Force; to determine whether any preliminary issues exist that could be addressed quickly (e.g., referability or time limit considerations); and, to assess file complexity and key considerations (e.g., the extent of impacts on the member or on the RCMP workplace). The ERC uses pre-screening results to assist in setting priorities for the selection of cases for review.

Cases Completed - Findings and Recommendations Issued

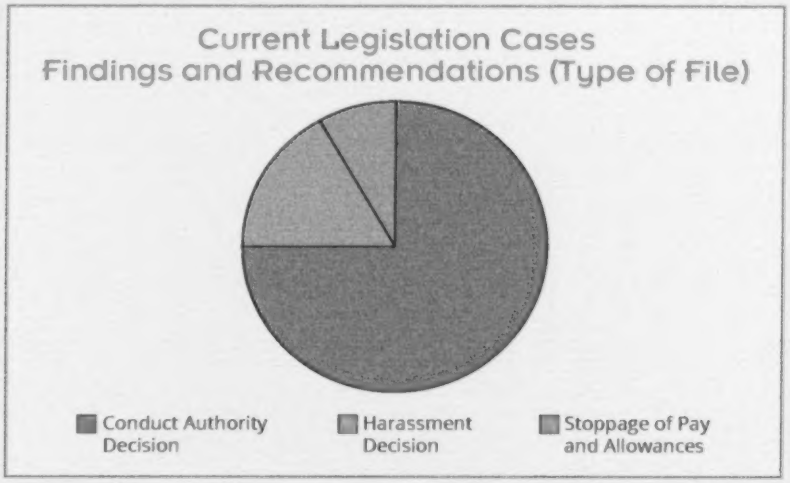
The ERC issued findings and recommendations for 29 case files in 2015-16: 12 current legislation cases and 17 legacy cases. An important factor affecting the number of completed cases was the need for the ERC to invest substantial time in assessing the legal issues arising in the current legislation cases, the associated impacts of new RCMP policies, guidelines, and the new file content.



Seven files were withdrawn by the members involved (all grievances) in 2015-16. No findings and recommendations were required for these files.

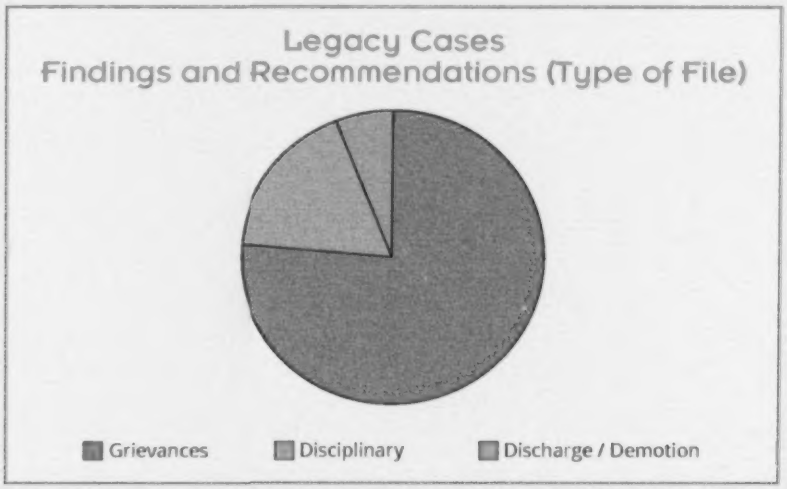
Current Legislation Cases

Of the 12 findings and recommendations issued in appeals of current legislation cases, 9 were conduct authority decision cases, 2 were harassment investigation decision cases and 1 was a stoppage of a member's pay and allowances

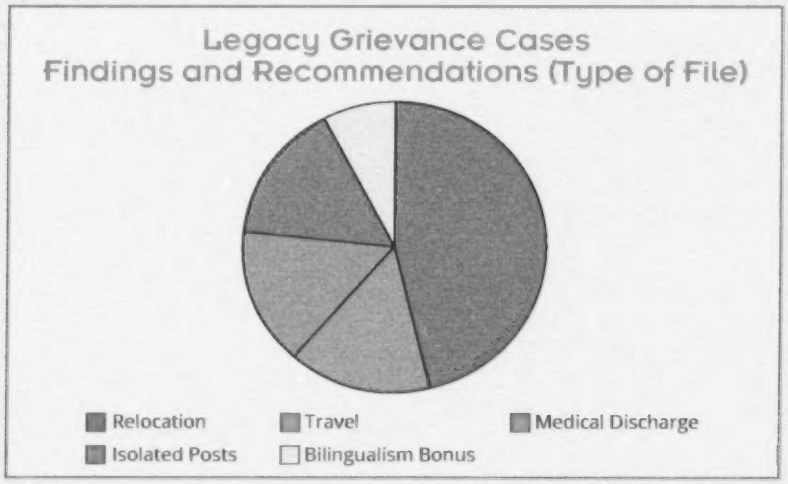


Legacy Legislation Cases

Of the 17 findings and recommendations issued for legacy cases, 13 were for grievances, 3 were for discipline cases and 1 was for a discharge case.



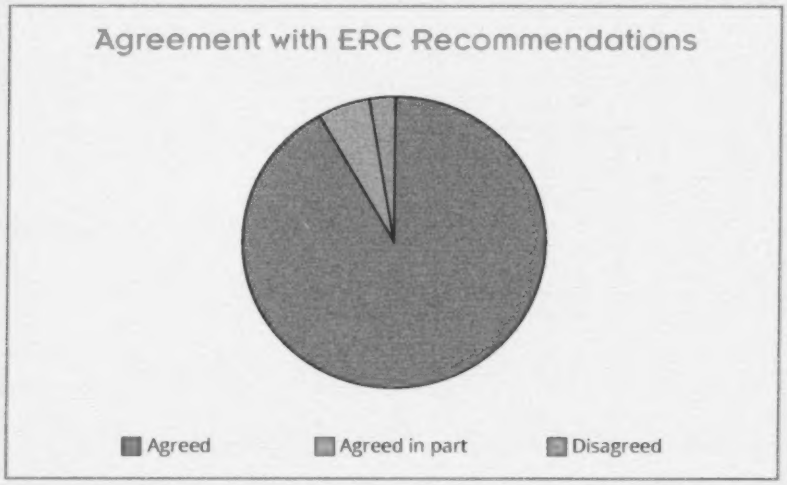
The composition of the 13 grievance cases was: 46% (6) relocation, 15% (2) travel, 15% (2) medical discharge, 15% (2) isolated posts and 7.7% (1) bilingualism bonus. Seven of the grievance files involved a consideration of preliminary issues (time limit questions, referability and member standing to grieve).



RCMP Commissioner Decisions Received

The ERC received the final decision of the Commissioner of the RCMP for 36 files for which the ERC had issued findings and recommendations: 35 legacy files and 1 current legislation file.

The Commissioner of the RCMP agreed with ERC recommendations in 92% of cases (33 files), partly agreed in 5.5% (2 files) and disagreed 2.8% (1 file).



Findings versus Recommendations

In considering whether a final decision of the Commissioner agrees, agrees in part or disagrees with recommendations made by the ERC, it is important to distinguish between findings and recommendations:

- findings express a legal assessment of the evidence, of the processes undertaken and/or the correctness of the first level decision that was made (in light of the appeal being made); for example, whether the rules of procedural fairness were followed or whether a sanction imposed on a member is supported by reasons in the decision;

- recommendations are based on the findings and generally address: the specific elements and impacts of a decision on a

member (such as recommending that a dismissal decision be upheld or not or that another conduct measure be imposed instead); and/or, more general or systemic management issues that are identified through the review of a file (such as recommending that a Force policy or guideline be clarified).

An agreement with ERC findings does not necessarily mean that there will be an agreement with ERC recommendations. For example, the Commissioner of the RCMP may agree with an ERC finding that there was a breach of procedural fairness but may decide not to follow a recommendation of the ERC to have the file considered afresh by a new Board. Similarly, the ERC may find that an allegation has been established and a conduct measure be imposed on a member but may recommend that a decision of a Board to dismiss a member be changed to a lesser measure. The Commissioner of the RCMP may agree with the ERC's finding regarding the allegation but may nonetheless decide to uphold the initial dismissal decision of the Board.

Highlights of Cases Completed in 2015-16

This section summarizes some of the key aspects of a selection of cases that the ERC reviewed and in respect of which it issued findings and recommendations in 2015-16. An overview of all findings and recommendations issued in 2015-16 is at **Annex B**.

As a quasi-judicial tribunal, the ERC applies the rule of law and is guided by the principles of fairness, impartiality, independence and transparency in conducting its case reviews. The ERC is a recommending body - it issues findings and recommendations the same way that an adjudication body issues decisions.

Current Legislation Cases

The ERC encountered several interesting and important issues in its review of cases under the current legislation this year. The issues revolved principally around how the new *CSOs* and associated RCMP policies were being interpreted and applied by RCMP managers, including the sufficiency of the reasons provided by a manager for a decision they make.

Conduct Appeals

This year, during the infancy of the RCMP's current conduct process, the ERC dealt with two significant and practical issues related to appeals of Conduct Authority decisions. In five separate cases, the ERC considered whether appeals of conduct cases are referable to the ERC where the basis for the referral is that the conduct measure imposed is a forfeiture of annual leave. In three other appeals of Conduct Authority decisions, the Chair addressed the procedural fairness issues relating to the insufficiency or absence of a Conduct Authority's reasons for a decision in the record.

Referability of Conduct Appeals Involving Forfeiture of Annual Leave

The types of conduct appeals that are to be referred to the ERC are set out in subsection 45.15(1) of the *RCMP Act*: a financial penalty of more than one day of the member's pay; a demotion; a direction to resign; a recommendation for dismissal; and, a dismissal. In ***C-001*** to ***C-005***, Conduct Authorities imposed either a forfeiture of annual leave alone or a forfeiture of annual leave combined with other conduct measures. The ERC considered whether the imposition of a "*financial penalty*" encompasses a forfeiture of annual leave.

The ERC concluded that a forfeiture of annual leave is not a financial penalty deducted from a member's pay. The ERC noted in its analysis that there are multiple conduct measures which could have a financial impact on a member without involving a deduction from a member's pay, such as ineligibility for promotion, deferment of a pay increase increment, reduction to the next lower rate of pay, and, a forfeiture of annual leave. However, sections 4 and 5 of the *CSOs (Conduct)*, which set out the various conduct measures that Conduct Authorities may impose on a member, each make a clear distinction between a financial penalty deducted from a member's pay and other conduct measures. The ERC noted that this distinction is instructive as it clarifies that a financial penalty deducted from a member's pay is a conduct measure that is separate from a forfeiture of annual leave (and from any other conduct measures which may have indirect financial consequences for a member). Accordingly, the five case files were not referable to the ERC. The Commissioner agreed and sent each conduct appeal to the appropriate decision-maker.

Sufficiency of Conduct Authorities' Reasons for Decision

In each of ***C-006***, ***C-007*** and ***C-008***, after a Conduct Meeting was held, the Conduct Authority found that the allegations were established and imposed conduct measures. However, in reviewing the appeals of these decisions, the ERC found that the Conduct Authorities' reasons for their respective decisions were either insufficient or absent. The ERC's Findings and Recommendations for these cases addressed not only the procedural fairness concerns but also the practical challenges for appellate review where there is no record of what transpired in the Conduct Meeting.

In ***C-006***, the Appellant faced an allegation that he had been belligerent and confrontational with officers from a local police force and thereby behaved in a manner likely to discredit the RCMP, contrary to section 7.1 of the *Code of Conduct*. In appealing the Conduct Authority's finding that the allegation was established, the Appellant argued that the Conduct Authority failed to establish and articulate the elements of the allegation, breached procedural fairness by failing to consider the Appellant's written submissions, erroneously concluded that the evidence supported the allegation, and imposed an excessive financial penalty.

The ERC identified three issues with the sufficiency of the Conduct Authority's reasons. First, the Conduct Authority did not make a conclusion about whether the Appellant's conduct had been belligerent or confrontational. Second, the Conduct Authority made no reference to section 7.1 of the *Code of Conduct*. He did not apply any test to determine, and did not specifically find, that the conduct was discreditable and breached section 7.1. Third, the Conduct Authority made no reference in the decision to the Appellant's written submissions.

The ERC emphasized that section 8 of the *CSOs* (*Conduct*) and section 9.2.1.14 of the RCMP's *Conduct Policy* impose a duty on Conduct Authorities to provide reasons for their decisions. After reviewing relevant Supreme Court of Canada cases, the ERC provided the following guidance as to what constitutes sufficient reasons:

> *The reasons need not be lengthy or written in legalistic terms. What the reasons for decision must do is provide to the member and to a reviewing body a roadmap from the evidence*

> *before and submissions made to the conduct authority, to the particular allegation(s) and conduct, and to the alleged breach of the relevant provisions of the legislation, in this case, section 7.1 of the* Code of Conduct, *through to the imposition of conduct measures, if any.*

The ERC found that the Conduct Authority's failures to consider section 7.1 or to make the necessary findings constituted material and determinative omissions that not only rendered the decision clearly unreasonable, but also prevented the ERC and the Commissioner of the RCMP from properly reviewing the decision.

The ERC recommended that the Commissioner allow the appeal of the decision and make the finding that, in his opinion, the Conduct Authority should have made. As the Record supported a finding that the Appellant's conduct was confrontational and discreditable, the ERC further recommended that the Commissioner make a finding – with reasons – that the Appellant contravened section 7.1 of the *Code of Conduct* and that he confirm the financial penalty imposed.

In ***C-007***, the Appellant faced two allegations that he had made false, misleading or inaccurate statements to a superior, contrary to section 8.1 of the *Code of Conduct*. In ***C-008***, the same Appellant as in ***C-007*** faced two allegations of discreditable conduct, contrary to section 7.1 of the *Code of Conduct*. However, the particularized conduct was again that he had made false, misleading or inaccurate statements to a superior.

In both cases, the Conduct Authority's reasons for decision merely restated the allegations and particulars and concluded:

> *Based on my review of the completed investigation including your statement I find the above noted allegations ESTABLISHED.*

In each case, one ground of appeal was that the Conduct Authority's decision was clearly unreasonable because he failed to provide reasons or any meaningful explanation as to how he arrived at his decision. The ERC made similar findings in both cases.

The ERC first noted that neither the Record nor the Respondent's reasons for the decisions contained any information regarding what transpired in the

Conduct Meetings. Therefore, the Conduct Meetings – the Appellant's only opportunity to be heard in person by the decision-maker – were rendered irrelevant and the Commissioner was prevented from considering any oral submissions that the Appellant may have made.

The ERC found that the Conduct Authority's declarations that the allegations were established did not constitute reasons as they were devoid of any supporting rationale or explanation. The Conduct Authority failed to make any findings of fact, refer to any evidence in the Investigation Report, address any of the Appellant's written submissions, indicate that the Appellant had been heard or provide a roadmap of his assessment of the evidence as to why or how he reached his decision. The ERC found that the failure to provide reasons contravened both the *CSOs (Conduct)* and the *Conduct Policy*, breached the principles of procedural fairness and rendered the decisions clearly unreasonable, and prevented the Commissioner from properly assessing the appeals. The ERC recommended that the Commissioner allow the appeals and make the finding that, in his opinion, the Conduct Authority ought to have made.

In ***C-007***, the ERC found that the Record supported a finding that the Appellant had made inaccurate statements to superiors and recommended that the Commissioner find that both Allegations are established.

In ***C-008***, the ERC found that failing to provide any discreditable conduct analysis rendered the decision clearly unreasonable and prevented the Commissioner from determining whether the appropriate test was considered and applied. The ERC further found that the Record did not support a finding that the Appellant had made false, misleading or inaccurate statements to superiors as particularized in Allegation #1. However, although the Record supported a finding that the Appellant made misleading statements, as particularized in Allegation #2, the ERC found that it did not support a finding that such statements constituted discreditable conduct. The ERC recommended that the Commissioner find that both Allegations are not established.

Timeliness of Harassment Complaints

The RCMP has established a simplified and streamlined process for dealing with allegations of harassment. The current *Investigation and*

Resolution of Harassment Complaint Policy and the *CSOs (Investigation and Resolution of Harassment Complaints)* amended the former process for dealing with harassment complaints.

Although a new process has been adopted, the limitation period for filing a harassment complaint within one year of the last alleged incident of harassment was retained. An important difference between the legacy provisions and the current system is regarding the nature of the ERC's review of the harassment cases that are referred to it. Under the legacy legislation, cases were submitted as grievances and the ERC reviewed the file "*de novo*", essentially reconsidering or "rehearing" the case. With the current process, referred files are appeals of written decisions and the ERC reviews the appeal but does not re-hear the case.

This year, the ERC received its first appeals of a written decision following a harassment complaint investigation in the current process - case files ***NC-002*** and ***NC-003***. Both appeals were from the same appellant.

In both files, the complaint had been rejected for not having been filed within the time limit of one year. The Appellant had been on medical leave at various times during 2011-2014. In November 2012, he accessed his medical file and became aware of notes of two RCMP Graduated Return to Work Program advisors contained in his file. Later in 2012, the Appellant made a request to the Respondent that the latter initiate an "*internal investigation*" into a number of RCMP members regarding alleged harassment. The Respondent, in February 2014, refused to proceed with an investigation but invited the Appellant to file harassment complaints. In February and March 2014, the Appellant filed four complaints of harassment against other members. In February 2015, he filed harassment complaints against the two Graduated Return to Work Program advisors. These latter complaints were the subject matter of ***NC-002*** and ***NC-003***.

In ***NC-002*** and ***NC-003***, the Appellant conceded that he filed his harassment complaints outside the time limit. However, he argued that there were exceptional circumstances that prevented him from doing so. More particularly, he had health issues that prevented him from determining that the advisors' actions constituted harassment. The Respondent rejected both harassment complaints and

found that, as the Appellant had been able to file other harassment complaints in early 2014, his circumstances were not exceptional.

The ERC found that the Respondent had not made any manifest or determinative errors in his appreciation of the facts submitted by the Appellant. The Respondent took into account both the psychological situation of the Appellant and the acts of the Appellant regarding the other harassment complaints he submitted during the period. The ERC also suggested that the *Investigation and Resolution of Harassment Complaint Policy* and the *CSOs (Investigation and Resolution of Harassment Complaints)* be amended to use the same terminology in respect of when time limits for filing a complaint might be extended. The *Policy* refers to "*extenuating circumstances*" while the *CSOs* refer to "*exceptional circumstances*".

Legacy Legislation Cases

The ERC typically issues findings and recommendations on many types of legacy case files each year. This was the situation again in 2015-16, with files including discipline, discharge, financial compensation and other appeal issues.

Disciplinary Appeals

In transitioning from the disciplinary regime under the former *RCMP Act* to the conduct regime under the new *RCMP Act*, any formal disciplinary proceedings with hearings initiated prior to November 28, 2014 are to continue under the provisions of the former *Act*. Pursuant to section 45.15 of the former *Act*, before considering an appeal of a disciplinary adjudication board's decision, the Commissioner of the RCMP refers the matter to the ERC. The ERC reviews the entire record of proceedings, including the allegations and particulars, the hearing transcript, tendered evidence, the board's written decision, and the parties' appeal submissions. The ERC then sends a report to the Commissioner of the RCMP and the parties containing the Chair's findings and recommendations on the appeal issues.

This year, the ERC issued findings and recommendations in three disciplinary appeal cases, two of which are discussed here. In ***D-127***, the ERC addressed the procedural fairness issue of the Member's right to be heard. In ***D-129***, the ERC addressed whether disciplinary boards have jurisdiction to adjudicate challenges brought under the

Canadian Charter of Rights and Freedoms (*Charter*) and to order remedies for *Charter* breaches.

The Right to Be Heard (D-127)

A formal disciplinary hearing before an adjudication board can result in a member facing serious consequences. Therefore, members subject to such hearings must be accorded a high degree of procedural fairness. This includes the right to a full and ample opportunity to make submissions on the merits of the allegation(s) made against a member.

In ***D-127***, the off-duty Member had been drinking and approached a private residence to use the homeowners' telephone to complain to RCMP dispatchers about a personal dispute. An RCMP officer responded but the Member continued to complain to the dispatchers and the homeowners. After several hours, the Member eventually left the residence.

A disciplinary hearing for an Allegation of disgraceful conduct ensued. At the close of the Appropriate Officer Representative's (AOR) case, the Member Representative (MR) brought a motion for non-suit, arguing that the AOR failed to present evidence to support some of the essential elements of the allegation. Both the AOR and MR submitted that, in a motion for non-suit, it was not the Board's role to weigh the evidence, assess its quality or to make a finding on the Allegation. After hearing the motion and adjourning for four hours, the Board resumed the hearing. However, the Board did not render a decision on, or mention, the motion for non-suit. Rather, it found that the Allegation had been established and proceeded to the sanction phase of the hearing.

The Member appealed the Board's finding on the Allegation, contending that she had been denied an opportunity to make thorough submissions on the merits. The ERC found that the right to make full closing submissions is enshrined in subsection 45.1(8) of the former *RCMP Act*, which requires that parties be provided with a full and ample opportunity to make representations. Thus, in failing to provide the opportunity to make comprehensive submissions on the merits of the Allegation and the quality of the evidence adduced, the Board breached the Member's right to be heard. The ERC recommended that the Commissioner of the RCMP allow the appeal and obtain

submissions on the merits of the allegation from both parties. The Commissioner allowed the appeal but, instead of requesting submissions, ordered a new hearing.

Can a Disciplinary Board Exclude Evidence Obtained in Breach of a* Charter *Right? (D-129)

In ***D-129***, the off-duty Member was arrested for driving while impaired. The arresting officer found that the Member's behavior, both while driving and after being pulled over, indicated impairment. Following his arrest, the Member was detained and ordered to undergo a breathalyzer test. At his criminal trial, the judge acquitted the Member after ruling that all post-arrest evidence was to be excluded as it was obtained in breach of the Member's *Charter* rights to be free of unreasonable search and seizure and to liberty and security of the person.

At the Member's disciplinary hearing, it was agreed by the parties that his *Charter* rights had been infringed. The MR brought a motion to exclude all post-arrest evidence, pursuant to section 24 of the *Charter*. Subsection 24(2) requires a *"court of competent jurisdiction"* to exclude evidence obtained in a manner which infringed or denied a *Charter* right if the admission of that evidence would bring the administration of justice into disrepute. The AOR argued that the Board did not have jurisdiction to exclude evidence.

The Board found that it was a *"court of competent jurisdiction"* for purposes of section 24 of the *Charter* and excluded the post-arrest evidence. The Board then found that the remaining evidence did not establish the allegation. The Appropriate Officer (AO) appealed the decision.

The ERC found that the Board was correct to conclude that it was a court of competent jurisdiction for purposes of subsection 24(1) of the *Charter* and that it had authority to exclude evidence under subsection 24(2). Under the former *RCMP Act*, disciplinary boards possess the authority to decide questions of law and therefore have the authority to decide *Charter* issues. In addition, as paragraph 24.1(3)(*c*) of the former *Act* provides broad discretion to boards to admit or reject evidence, boards have the authority to exclude evidence obtained in breach of the *Charter*.

The ERC found that the Board had properly applied the three-part test to determine whether

the admission of the post-arrest evidence would bring the administration of justice into disrepute. First, the breach was significant given the absence of reasonable grounds to arrest the Member. Second, the impact of the breach on the outcome of the hearing could have a significant professional impact on the Member. Finally, society's interest favoured exclusion as a reasonable person would not accept the admission of the post-arrest evidence.

Lastly, the ERC found that the Board correctly concluded that the remaining evidence failed to establish that the Member had been impaired. The ERC recommended that the Commissioner of the RCMP dismiss the appeal and confirm the Board's decision.

Discharge and Demotion Appeals

Under subsection 45.25(1) of the former *RCMP Act*, prior to November 28, 2014, when a Discharge and Demotion Board's decision is appealed, the Commissioner of the RCMP refers the matter to the ERC before considering the appeal. The ERC reviews the entire record of proceedings, including the Notice of Intent and the material relied upon by the AO to recommend the discharge or demotion of a member, the hearing transcript and any tendered evidence, the board's decision, and the parties' appeal submissions. The ERC then submits a thorough report to the Commissioner of the RCMP and the parties that addresses the issues arising in the appeal and contains the Chair's findings and recommendations to the Commissioner.

If a member's performance is unsatisfactory, the former *Act* requires that reasonable assistance, guidance and supervision be provided to the member in an attempt to improve their performance. Therefore, the Force's response to performance issues is a key consideration when deciding whether discharge or demotion is warranted.

The Force's Obligation to Provide Reasonable Assistance, Guidance and Supervision (R-006)

This year, the ERC issued findings and recommendations in one discharge and demotion appeal. The central issue in the appeal was whether the Force had provided the required level of assistance, guidance and supervision contemplated by the *Act*.

In ***R-006***, the Member had experienced difficulties with respect to case management and taking charge when responding to situations. Supervisors tried to assist the Member through individual meetings. They also paired the Member with a colleague. The Member was subsequently assigned to a new detachment under new supervision in an effort to improve her performance. Her new supervisors provided her with assistance, including pairing her with a mentor for 11 shifts and sending her on patrols with other members. Ultimately, the Member's supervisors decided that her performance remained unsatisfactory.

The Member was served with a Notice of Intent to Discharge. She requested that a Board review her case. The Board held a hearing and found that the Member had failed to perform her duties in a fitting manner. The Board pointed to evidence which indicated that she still had difficulty taking charge of situations and showing initiative. The Board also found that reasonable assistance, guidance and supervision had been provided, and ordered the Member's discharge.

The Member appealed the Board's decision, arguing that insufficient efforts had been made by the Force to help her improve her performance.

The ERC concluded that there was ample evidence of the Force providing reasonable assistance, guidance and supervision to the Member, including managers entering comments in the Member's electronic file records, multiple meetings with the Member to discuss her performance and provide feedback, pairing the Member with various members and a mentor for practical assistance, and transferring her to a new detachment. The ERC also found that the Board did not commit any palpable or overriding errors in its assessment of the relevant evidence or in the conclusions it reached in light of that evidence. The ERC recommended that the Commissioner of the RCMP dismiss the appeal.

Grievance Reviews

Under *Part III* of the former *RCMP Act*, a member may submit a grievance if the member was aggrieved by a decision, act or omission made in the administration of the Force's affairs. The ERC reviews certain types of grievances instituted under the former *RCMP Act* where a grievor seeks a review of a Level I decision. The former

RCMP Regulations indicate specific kinds of grievances that are referred to the ERC.

Referability – Retroactive Corrective Payment of Relocation Benefits Project

This year, the ERC reviewed grievances arising from the Force's Retroactive Corrective Payment of Relocation Benefits Project (Project). The Project's objective was to retroactively correct discrepancies in relocation benefits provided to members who were transferred between 2001 and 2008. The discrepancies resulted from inconsistent interpretations and applications of the 40-km rule for Force-paid transfers under the *RCMP Integrated Relocation Program* (*IRP*). In particular, there were different applications of the requirement that, to qualify for a Force-paid transfer, the distance between the Member's principal residence and the new workplace must be at least 40 kms.

Under the Project, certain criteria were established to determine whether a member's relocation would be eligible for reconsideration. In ***G-601*** and ***G-602***, each Grievor was denied eligibility for the Project, albeit for different reasons. They both grieved their denials. After their grievances were denied at Level I, they each sought review at Level II. Their files were referred to the ERC and the ERC assessed whether it had jurisdiction to review the grievances.

The types of grievances that are referred to the ERC for its review are set forth in section 36 of the former *RCMP Regulations*. Subsection 36(d) permits the ERC to review grievances relating to the Force's interpretation and application of the *IRP*. Thus, the question was whether the denials grieved involved an interpretation and application of the *IRP*.

The ERC recognized that the eligibility criteria for the Project were based on the requirements of the *IRP* and that the Project itself was intended to correct prior errors in the Force's administration of the *IRP*. However, to make findings on whether the Grievors met the eligibility criteria for the Project, the ERC would not be reviewing the Force's interpretation and application of the *IRP* but its interpretation and application of a separate, internal initiative undertaken by the Force. Therefore, the grievances were not referable under subsection 36(d), or any other s. 36 subsection, and the ERC had no legal authority to review the files.

Retirement Relocation – Maximum Allowable Period – Exceptional Medical Circumstances

The ERC considered a grievance where, despite the existence of exceptional medical circumstances, the Grievor's request to extend the period for completing his retirement relocation was denied. The facts of the grievance were properly described by the Level I Adjudicator as both "*cruel and tragic*". Although the ERC found that the denial was consistent with the provisions of the *RCMP Integrated Relocation Program* (*IRP*), the ERC suggested an alternate resolution which would make it possible for the Force to financially assist the Grievor without contravening policy.

In ***G-608***, the Grievor indicated upon retirement that he wished to exercise his right to a financially-assisted retirement relocation from one province to another. The Force agreed that he was eligible for a relocation within the period set out in section 14.01.4 of the applicable *IRP* version:

> *Retirement relocation provisions under Section 79(1),* RCMP Regulations *are available only for 2 years after the date on which a member is discharged. The Departmental National Coordinator may approve a 1-year extension when exceptional circumstances exist beyond the member's control. No additional request for extension will be accepted beyond the third year. Note: Only exceptional circumstances relating to serious medical condition involving a member and/or dependents will be considered.*

Following the Grievor's retirement, his wife developed critical health issues requiring a multi-year period of medical testing which she preferred to undergo in one province. In light of her exceptional medical circumstances, the Grievor requested and received a one-year extension of his retirement relocation period. Once medical tests suggested that his wife's situation was no longer life-threatening, the Grievor started searching for a retirement property in the second province. However, the Grievor was soon diagnosed with a life-threatening condition. He sought another extension of the retirement relocation period to beyond the three-year maximum permitted by the *IRP*. The Respondent denied the request, noting that he did not have the authority to

grant it. The Grievor recovered and, more than three years after retiring, paid to move his family. His wife died shortly thereafter.

The Grievor disputed the Respondent's refusal to extend the retirement relocation period. The Level I Adjudicator denied the grievance and the Grievor sought a Level II review.

The ERC found that section 14.01.4 of the *IRP* clearly prohibited extensions beyond the third anniversary of a retirement and recommended that the Commissioner deny the grievance. However, the ERC also pointed out that it was open to the Commissioner of the RCMP to consider the Grievor's eligibility to receive a grant from the RCMP Benefit Trust Fund to cover verifiable retirement relocation expenses.

The Commissioner agreed with the ERC that it was appropriate to deny the grievance and to consider an RCMP Benefit Trust Fund grant to recover what would otherwise have been standard retirement relocation expenses. He directed that the Respondent provide the Grievor with the relevant policies and assist the Grievor in filing an application with the Secretary, Benefit Trust Fund, National Headquarters.

Outreach and Communications

Outreach and communications are important components of the ERC's work. They support the ERC's contributions to fair and transparent employment and labour relations decisions, RCMP member and manager knowledge and awareness of workplace issues, accountability and workplace health in the RCMP.

Publications and Website Information

The ERC *Communiqué* provides regular updates through summaries of ERC findings and recommendations, as well as summaries of final decisions of the Commissioner of the RCMP. It is distributed to RCMP detachments and other RCMP offices across Canada and is posted on the ERC website. Two *Communiqués* were published and distributed in 2015-16.

The ERC home website (*www.erc-cee.gc.ca*) offers an extensive, searchable database containing summaries of ERC findings and recommendations along with summaries of final decisions of the Commissioner of the RCMP. The website also contains the ERC's most

requested articles, discussion papers and specialized reports highlighting key issues related to the work of the ERC.

Information on the ERC and its work is now available through *Canada.ca*. The information is set forth on a new "topic page" entitled, *Independent oversight and review of the RCMP*, as part of the *Policing, justice and emergencies* "theme" content on *Canada.ca*. The page was produced collaboratively with Public Safety portfolio partners. The migration of all web content from the ERC's current website to *Canada.ca* is underway and expected to be completed in 2016.

Outreach and Engagement Activities

Outreach activities with the RCMP have historically included information sessions provided to RCMP members in National Headquarters, Divisional Headquarters and detachments. The ERC also participates in and supports RCMP training.

In 2015-16, the ERC Chair visited the RCMP training academy ("Depot" Division) in Regina and spoke with senior officers and cadets. In January 2016, the Chair and ERC staff provided an information and discussion session at RCMP National Headquarters for managers who are responsible for supporting the Force's recourse system in the RCMP Divisions across the country. ERC staff also participated in an RCMP internal review of the first year of the administration of the recourse regime under the current legislation.

In October 2015, the ERC had the opportunity to discuss police oversight, independent review and the ERC program with a delegation of foreign officials to assist their efforts to develop accountability mechanisms for national police services.

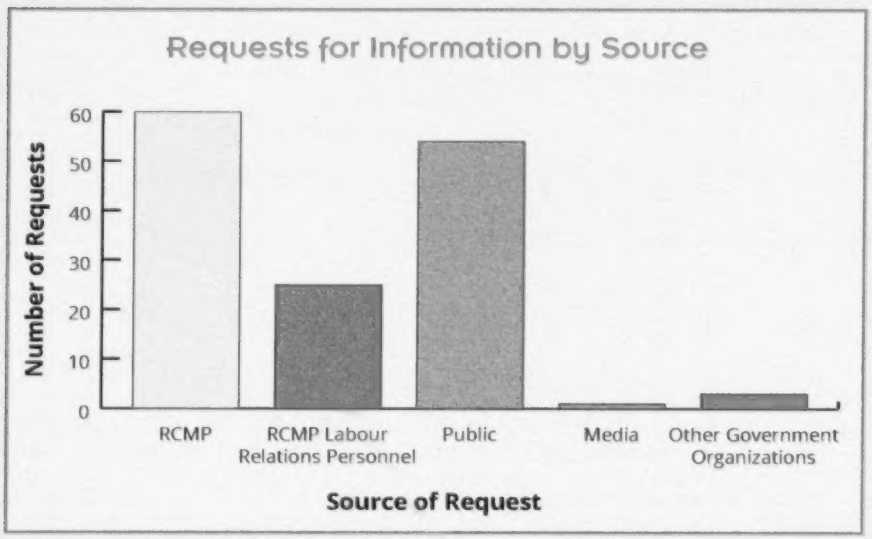
Responses to Requests for Information

The ERC receives requests for information about its program and activities from the public, media, other government organizations and RCMP members. The ERC received and responded to 143 requests in 2015-16:

- just over half came from the RCMP (current RCMP members, RCMP labour relations personnel or retired members), who most often enquired about the status of a referred file or had questions about the role of the ERC;

- members of the public were the second largest group of requesters, and typically sought general information about the ERC program.

The ERC provided an answer to each request within one day in almost all occasions. When there was a need to undertake research or verifications, the response was provided as soon as possible.



Corporate Management and Planning

The ERC must meet a range of accountability, reporting and other management requirements, statutory and otherwise, just as large organizations do. The applicable requirements include delegated human resources and financial authorities, information management, access to information and privacy, communications, procurement, accommodations, audit and internal reviews.

In 2015-16, as in previous years, a wide scope of corporate services infrastructure and support was provided to the ERC by Public Safety Canada under a memorandum of understanding. The ERC also received support and advice from the small agency and administrative tribunal communities.

A renewed Management Resources and Results Structure (MRRS) was completed and will be reflected in ERC estimates reporting, beginning with the Report on Plans and Priorities

for 2016-17. The changes made to the MRRS support the ERC's focus on results and continous improvement.

The ERC shared information with other federal agencies and departments on the key features of its Case Review Processing Initiative through the Treasury Board of Canada Secretariat-led Business Process Modernization initiative, as part of Blueprint 2020 efforts.

PART III – Operational Outlook

The ERC faces significant challenges to its operations in the coming years. Our backlog of cases increased substantially in 2015-16 and we anticipate further increases as we receive current and legacy referrals over the next several years. The potential delays in the issuance of findings and recommendations by the ERC pose a serious risk to the integrity of the ERC program.

Maintaining the integrity of the appeal review program will be the primary management challenge for the ERC

The ERC total caseload for legacy and current legislation cases combined was 130 at the end of 2015-16 - a 100% increase from 65 at the end of 2014-15. The majority of the increase is attributable to an exceptionally large number of referrals of legacy cases from the RCMP (81) during the year.

In addition, the number of cases referred to the ERC in future years is projected to double compared to historical rates. The average number of referrals historically was approximately 35 (all legacy files). This will rise to an estimated 80 cases per year for legacy and current legislation cases combined. The level of referrals is expected to continue for the next five years (approximately) until legacy files at the Force are all processed.

The increased number of referrals created operational pressure for the ERC by the end of 2015-16. Delays for the completion of files - already longer than acceptable - have started to rise. Based on current estimates, a typical two to three year average wait time for the completion of referred legacy cases may double. Similarly, a wait time of several months for the completion of current legislation cases in 2015-16 could increase by up to a year each year. The ERC is working with the RCMP to refine projections to support management and planning.

The concept of timely review of referred cases is critical to the mandate of the ERC. We will continue to focus on program improvement and efficiency. However, it is clear that such improvements alone will not address the pressure of the

existing caseload and the anticipated increases in the numbers of referrals in future years.

ERC case review practices are being monitored, tested and adjusted to support performance with a continuing focus on enhancing efficiency

The ERC implemented a Case Review Processing Initiative in 2014-15 to enhance its case review practices and efficiency. The initiative is ongoing and there has been some success to date. Over the past two fiscal years, the ERC has increased its average case review results (34 files completed per year) compared to historical rates (28 files completed per year). We achieved the increase while managing the transition to work under the new legislation and continuing to receive legacy cases.

Cases are generally processed in the order in which they are received by the ERC, in the interests of fairness and equity. However, the ERC has prioritized cases to improve efficiency and to recognize the differing impacts our delays occasion on the members involved and the organization (e.g. for disciplinary files where the sanction would be dismissal, for files involving discharge or when a member's pay and allowances have been suspended). In addition, the ERC has prioritized cases involving preliminary issues (such as time limit questions, the issue of whether a matter is actually referable to the ERC). These cases can often be processed quickly and it is important to remit them to the RCMP to allow the case to proceed efficiently through the internal RCMP system.

The ERC is continuing to develop its framework to assign priority for its case reviews, recognizing, in particular, that sanctions under the current legislation apply to members immediately (not pending appeal decisions, as for legacy cases).

A number of adjustments to case review practices and management were introduced in 2015-16. They included streamlining processes to introduce flexibility to address different kinds of cases and setting and reviewing file completion targets. Additional projects will be pursued in 2016-17 to improve output, for example taking advantage of opportunities presented by similar files that may be efficiently reviewed together rather than

individually. In setting case priorities, the ERC remains cognizant of any possible effects on equity and fairness.

The ERC will be establishing service standards and reporting publicly on them

The ERC has committed to ensuring that service standards with time limits for the completion of case reviews will be established based on the most reliable and complete information at its disposal.

With that in mind, the ERC has identified the end of 2016-17 as the target for setting and making public initial service standards with time limits for the completion of case reviews. We anticipate that the time frame of the end of the 2016-17 fiscal year will permit the standards to be underpinned by an acceptable understanding of the nature and complexities of the cases that the ERC will receive in future years. Standards will be developed for both current and legacy legislation cases and will be an important accountability and program management tool.

ANNEX A
List of Laws, Regulations and Orders

Laws

RCMP Act
Enhancing Royal Canadian Mounted Police Accountability Act

Regulations

Under the *RCMP Act* (in force as of November 28, 2014)

RCMP Regulations (SOR/2014-281)
Regulations Prescribing an Oath of Secrecy (SOR/2014-280)
RCMP Stoppage of Pay and Allowances Regulations (SOR/84-886)
RCMP External Review Committee Rules of Practice and Procedure (SOR/88-313)
Royal Canadian Mounted Police External Review Committee Security and Confidentiality Regulations (SOR/88-397)

Under the *RCMP Act* (prior to November 28, 2014)

RCMP Regulations (SOR/88-361)

(Selected) Commissioner's Standing Orders

Under the *RCMP Act* (in force as of November 28, 2014)

Commissioner's Standing Orders (Conduct) (SOR/2014-291)
Commissioner's Standing Orders (Employment Requirements) (SOR/2014-292)
Commissioner's Standing Orders (General Administration) (SOR/2014-293)
Commissioner's Standing Orders (Grievances and Appeals) (SOR/2014-289)
Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) (SOR/2014-290)

Under the *RCMP Act* (prior to November 28, 2014)

Commissioner's Standing Orders (Grievances) [Repealed] (SOR/2003-181)
Commissioner's Standing Orders (Representation), 1997 [Repealed] (SOR/97-399)
Commissioner's Standing Orders (Disciplinary Action) [Repealed] (SOR/88-362)
Commissioner's Standing Orders (Classification Redress Process for Members) (SOR/2001-248)
Commissioner's Standing Orders (Practice and Procedure) [Repealed] (SOR/88-367)
Commissioner's Standing Orders (Qualifications) [Repealed] (SOR/88-366)
Commissioner's Standing Orders (Dispute Resolution Process for Promotions and Job Requirements) [Repealed] (SOR/2000-141)

ANNEX B
Overview of ERC Findings and Recommendations in 2015-16

Current *RCMP Act*

Conduct Appeals

ERC Case Number	Subject Matter of the Appeal (*Code of Conduct* Section) / Key Issues	ERC Findings and Recommendations
C-001	Unauthorized use of government-issued equipment and property (s. 4.6); fail to provide complete, accurate and timely accounts (s. 8.1); and fail to obey lawful order (s. 3.3). Forfeiture of annual leave imposed. Whether the ERC has jurisdiction to review the appeal.	The ERC has no legal authority to review the appeal. Forfeiture of annual leave is not a conduct measure that renders an appeal referable to the ERC under s. 45.15(1) of the *Act*.
C-002	Discreditable conduct – inappropriate handling of firearms (s. 7.1). Forfeiture of annual leave imposed. Whether the ERC has jurisdiction to review the appeal.	The ERC has no legal authority to review the appeal. Forfeiture of annual leave is not a conduct measure that renders an appeal referable to the ERC under s. 45.15(1) of the *Act*.
C-003	Making false, misleading or inaccurate statements to another member of the Force concerning an investigation (s. 8.1). Forfeiture of annual leave imposed. Whether the ERC has jurisdiction to review the appeal.	The ERC has no legal authority to review the appeal. Forfeiture of annual leave is not a conduct measure that renders an appeal referable to the ERC under s. 45.15(1) of the *Act*.

C-004	Making vulgar, offensive and sexist comments in presence of other members (s. 2.1). Forfeiture of annual leave imposed. Whether the ERC has jurisdiction to review the appeal.	The ERC has no legal authority to review the appeal. Forfeiture of annual leave is not a conduct measure that renders an appeal referable to the ERC under s. 45.15(1) of the *Act*.
C-005	Discreditable conduct – operating police vehicle in a manner dangerous to the public resulting in a collision (s. 7.1). Forfeiture of annual leave imposed. Whether the ERC has jurisdiction to review the appeal.	The ERC has no legal authority to review the appeal. Forfeiture of annual leave is not a conduct measure that renders an appeal referable to the ERC under s. 45.15(1) of the *Act*.
C-006	Discreditable conduct – inappropriate off-duty behavior (s. 7.1). Forfeiture of pay imposed. Appeal of the finding of misconduct and of the conduct measure imposed. Sufficiency of the Conduct Authority's reasons for decision. Appropriate test for establishing discreditable conduct. Proportionality of conduct measure imposed.	Due to the insufficiency of the Conduct Authority's reasons for the decision, allow the appeal of the finding of misconduct. Recommend that the Commissioner make a finding - with reasons - that the allegation is established (per s. 45.16(2)(*b*) of the *Act*). Uphold the conduct measure imposed.

C-007	Making false, misleading or inaccurate statements to a superior (s. 8.1). Multiple conduct measures imposed, including a forfeiture of 10 days' pay. Appeal of the finding of misconduct and of the conduct measures imposed. Sufficiency of Conduct Authority's reasons for decision. Conduct Authority considering irrelevant aggravating factors in determining conduct measures. Whether the conduct measures imposed were proportional to the seriousness of the misconduct.	Due to the insufficiency of the Conduct Authority's reasons for the decision, allow the appeal of the finding of misconduct. Recommend that the Commissioner make a finding - with reasons - that the allegations are established (per s. 45.16(2)(*b*) of the *Act*). Allow the appeal of the forfeiture of 10 days' pay. Consistent with published Force guidelines, impose a forfeiture of from three to seven days' pay to address both allegations. Confirm the remaining conduct measures imposed.
C-008	Discreditable conduct – allegations of making false, misleading or inaccurate statements to a superior. Multiple conduct measures imposed including a forfeiture of five days' pay. Appeal of the findings that the allegations were established and of the conduct measures imposed. Insufficiency/lack of Conduct Authority's reasons for decision.	Due to the insufficiency of the Conduct Authority's reasons for the decision, allow the appeal of the findings of discreditable conduct. Recommend that the Commissioner make a finding - with reasons - that the allegations of discreditable conduct were not established (per s. 45.16(2)(*b*) of the *Act*). Rescind all conduct measures.

C-009	Failing to act with integrity, fairness and impartiality, compromising or abusing authority, power or position (s. 3.2); engaging in harassment (s. 2.1). Forfeiture of annual leave imposed. Whether the ERC has jurisdiction to review the appeal.	The ERC has no legal authority to review the appeal. Forfeiture of annual leave is not a conduct measure that renders an appeal referable to the ERC under s. 45.15(1) of the *Act*.

Non-Conduct Appeals

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
NC-001	Appeal of decision to stop the Member's pay and allowances while the Member is suspended from duty due to suspected criminal activity. Standard of proof required for a finding that a Member was "clearly involved" in the alleged misconduct.	Allow the appeal. The Respondent erred in law by not applying the "balance of probabilities" standard of proof. However, there is sufficient evidence that, on a balance of probabilities, the Member was clearly involved in the alleged conduct. Therefore, remit the matter to the Respondent for a new decision applying the correct standard of proof.
NC-002	Appeal of the decision to dismiss the harassment complaint because the complaint was not filed within the one-year time limit.	Dismiss the appeal. The complaint was filed after the time limit expired. No exceptional circumstances to justify extending the time limit.

NC-003	Appeal of the decision to dismiss the harassment complaint because the complaint was not filed within the one-year time limit.	Dismiss the appeal. The complaint was filed after the time limit expired. No exceptional circumstances to justify extending the time limit.

Former *RCMP Act*

Discipline (Adjudication) Board Decision Appeals

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
D-127	Disgraceful conduct – off-duty intoxicated behavior in public. Member appeal of the Board's finding that the allegation was established. Procedural fairness – whether the Board breached the Member's right to be heard by not providing the Member with a full and ample opportunity to make submissions regarding the allegation.	Allow the appeal. The Board breached the Member's right to be heard. Recommend that the Commissioner obtain written submissions from the parties on the allegation and then make the finding on the allegation that, in the Commissioner's opinion, the Board should have made (per s. 45.16(2)(c) of the *Act*).
D-128	Disgraceful conduct – off-duty shoplifting. Allegation admitted. Member appeal of the sanction imposed: a direction to resign within 14 days or be dismissed. Whether the Board erred by rejecting a psychologist's expert evidence, making unsupported findings of fact, improperly weighing mitigating circumstances or disregarding the principle of parity of sanction.	Dismiss the appeal. The Board provided clear reasons for, and did not err in, rejecting the expert evidence. The Board did not make any manifest and determinative errors in evaluating evidence, in weighing mitigating circumstances or in imposing sanction.

D-129	Disgraceful conduct – off-duty impaired driving. Appropriate Officer appeal. The Board excluded evidence after finding that the Member's *Charter* rights were breached. The Board also determined that there were no signs of physical impairment and that the Member's conduct was not disgraceful. The allegation was not established. Appeal of the Board's findings that: - it had jurisdiction to hear and decide *Charter* issues and grant remedies; and - the remaining evidence was insufficient to establish the allegation.	Dismiss the appeal and confirm the Board's decision. Adjudication Boards are courts of competent jurisdiction to grant *Charter* remedies and may exclude evidence. The Board did not err in deciding to exclude evidence or in finding that the allegation was not established based on the remaining evidence.

Discharge and Demotion Board Decision Appeals

ERC Case Number	Subject Matter of the Appeal / Key Issues	ERC Findings and Recommendations
R-006	Member appeal of a decision to discharge the Member for failing to properly perform duties. Whether the Force fulfilled its obligations to provide reasonable assistance, guidance and supervision to the Member.	Dismiss the appeal. The Force met its obligations.

Grievance Decision Reviews

ERC Case Number	Subject Matter of the Grievance / Key Issues	ERC Findings and Recommendations
G-601	Decision that the Grievor's 2007 relocation at personal expense was ineligible for reconsideration under the Force's Retroactive Corrective Payment of Relocation Benefits Project (the Project). Whether the ERC has jurisdiction to review the grievance.	The ERC has no legal authority to review the grievance. The Respondent's decision involved interpreting and applying the Project's eligibility criteria; not the *RCMP Integrated Relocation Program*. The file is not referable to the ERC.
G-602	Decision that the Grievor's 2000 relocation at personal expense was ineligible for reconsideration under the Force's Retroactive Corrective Payment of Relocation Benefits Project (the Project). Whether the ERC has jurisdiction to review the grievance.	The ERC has no legal authority to review the grievance. The Respondent's decision involved interpreting and applying the Project's eligibility criteria; not the *RCMP Integrated Relocation Program*. The file is not referable to the ERC.
G-603	Notice of Intention to Discharge for physical or mental disability. Whether the Member has standing to grieve.	Deny the grievance. The Member has no standing because interim steps in a medical discharge process are not grievable.

G-604	Relocation flight expenses denied. Flights were not booked through the Government Contracted Travel Service (GCTS) for spouse's House Hunting Trip and dependents' travel to the new location. Whether the denial was consistent with the *RCMP Integrated Relocation Program* (*IRP*).	Allow the grievance. Reimburse the Grievor for family members' flight expenses. There were exceptional circumstances that prevented the Grievor from using the GCTS. The flight expenses fell within the intent of the *IRP*.
G-605	Relocation expense denied. Expense incurred for cancelling dependent's high school graduation trip. Whether the denial was consistent with the *RCMP Integrated Relocation Program* (*IRP*).	Deny the grievance. This expense was not a sundry relocation expense under the *IRP* and there were no exceptional circumstances justifying reimbursement.
G-606	Decision to process the Grievor's Vacation Travel Assistance (VTA) claim at a particular rate. Whether the decision was consistent with the Treasury Board's rates published pursuant to its *Isolated Posts and Government Housing Directive* (*IPGHD*).	Deny the grievance. The *IPGHD* was properly applied.
G-607	Administrative medical discharge. Whether the Level I Adjudicator had jurisdiction to decide the matter. Whether the Adjudicator breached procedural fairness. Whether the grievance was presented in time.	Deny the grievance. The Level I Adjudicator had jurisdiction and did not breach procedural fairness. Time limit was not met.

G-608	Retirement relocation benefits. Denial of the Grievor's request for a second extension of the retirement relocation period to beyond the maximum period permitted by the *RCMP Integrated Relocation Program* (*IRP*). Whether exceptional medical circumstances justified extension.	Deny the grievance. The *IRP* was properly applied. The Commissioner may wish to consider examining the Grievor's eligibility for a grant from the RCMP Benefit Trust Fund to cover verifiable retirement relocation expenses.
G-609	Denial of a transfer allowance under the *RCMP Integrated Relocation Program*. Time limit – whether the grievance was presented within 30 days of when the Grievor knew or ought to have known he was aggrieved.	Deny the grievance. Time limit was not met.
G-610	Denial of Grievor's request for a retroactive Private Accommodation Allowance. Whether the grievance was presented in time.	Allow the grievance. Time limit was met. Return the grievance to Level I for consideration of the merits.
G-611	Commuting expenses claim denied. Whether the expenses were subject to reimbursement under any policy.	Deny the grievance. The decision was not inconsistent with policy; the *RCMP Integrated Relocation Program* does not apply; and, the expenses are not reimbursable under the *RCMP Travel Directive* or the *National Joint Council Travel Directive*.

G-612	Vacation Travel Assistance (VTA) claim denied. Whether the claim was submitted in time pursuant to the *Isolated Posts and Government Housing Directive* (*IPGHD*).	Deny the grievance. The *IPGHD* was properly applied. The VTA claim was not submitted in time. The Grievor is responsible for being familiar with the *IPGHD*. Suggest that the Commissioner ensure that members are fully informed of benefits and entitlements available under the *IPGHD* and that affected members receive the comprehensive information package referred to in the *IPGHD*.
G-613	Bilingual bonus. Time limit - whether the grievance was presented within 30 days of when the Grievor knew or ought to have known he was aggrieved. The language rights of respondents.	Deny the grievance. Time limit was not met. Suggest that the Commissioner remind the Office for the Coordination of Grievances to respect both parties' official language rights.

ANNEX C
Staff and Contacts

Staff in 2015-16 *

Josh Brull, Counsel
Jamie Deacon, Executive Director
Lorraine Grandmaitre, Manager, Corporate Services
Martin Griffin, Counsel
Jill Gunn, Counsel
Jonathan Haig, Administrative Officer
Caroline Verner, Counsel
Elizabeth M. Walker, Chair

* includes secondments and term employees

Contact Information

P.O. Box 1159, Station B
Ottawa, Ontario
K1P 5R2

Telephone: 613-998-2134
Fax: 613-990-8969
E-mail: org@erc-cee.gc.ca
Internet: www.erc-cee.gc.ca